IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Kishan Singh. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 2317/2006

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Date of Order: May 07, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.S. Sidhu, for the petitioner.
Mr. B.L. Tiwari, Deputy Govt. Advocate, for respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to pay him the salary and other allowances from the date of removing him from service i.e. 5-12-2001 till the date of his reinstatement in service along with interest @ 9% per annum.

The facts and circumstances giving rise to the instant

writ petition are that disciplinary proceedings under rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short, "the CCA Rules" hereinafter) were initiated against the petitioner. The memorandum of charges along with Statement of Allegations were served on the petitioner and during contemplation of the disciplinary proceedings, he was placed under suspension from 31-1-2001 to 5-12-2001. After holding the inquiry and finding the charges proved, the penalty of removal from service was imposed and in pursuance thereof, the petitioner was removed from service vide order Annx.1 dated 5-12-2001. The petitioner challenged the order of removal from service by way of filing an appeal before the respondent No.3, the Director General, R.A.C. Rang II, Jaipur, the Appellate Authority. The said appeal was dismissed by the Appellate Authority vide order dated 19.6.2002 (Annx.2). The petitioner filed a review petition before His Excellency the Governor of the State of Rajasthana and the review petition came to be accepted by His Excellency the Governor of Rajasthan vide order dated 6-1-2005 (Annx.3), setting aside the orders of the Disciplinary Authority and the Appellate Authority. Vide order Annx.4 dated 25-1-2005, the petitioner has been reinstated in service after passing the order on the review petition filed by the petitioner. However, the petitioner made a representation Annx.5 dated 12-5-2005 for payment of salary

and other allowance from the date of his removal till reinstatement. The representation filed by the petitioner has neither been considered nor decided by the respondents. Hence this writ petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the order removing the petitioner from service has been set aside on a review petition filed by him before His Excellency the Governor of Rajasthan and, therefore, the petitioner is entitled for the salary and allowances from the date of his removal till he was reinstated in service. Learned counsel has relied on the decision of the Hon'ble Supreme Court in Union of India Vs. Madhusudan Prasad, (2004) 1 SCC 43; and the decisions of this Court in Life Insurance Corporation of India & Anr. Vs. Rampal Singh, 2006 (1) CDR 593 (Raj.) (DB); and Pramod Kumar Sharma Vs. Laxmi Narain Sharma, 1991 (1) RLR 133.

Learned Deputy Government Advocate appearing for the respondents contended that the Reviewing Authority has not made any order for payment of the salary and allowances for the period from the date of removal of the petitioner till his reinstatement in service and without there being a specific order of the Reviewing Authority, the petitioner is not entitled for the pay and allowance for the said period. He has relied on a recent

decision of the Hon'ble Supreme Court in U.P. State Brassware Corporation Ltd. & Anr. Vs. Udai Narain Pandey, AIR 2006 SC 586.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In Union of India Vs. Madhusudan Prasad (supra), the Hon'ble Supreme Court held that it is true that when a reinstatement is ordered in appeal review, the authorities can pass specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty preceding the dismissal, removal or compulsory retirement. It was further observed as under:-

> "In the instant case, the Appellate Authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. But the respondent was removed from service without any enquiry and he was not even given a show-cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. Therefore, Fundamental Rule 54 cannot be invoked by the authorities to deny him back wages from the date of dismissal to reinstatement."

The Hon'ble Apex Court further held that these relevant facts were considered and the learned Single Judge as also the Division Bench ordered the payment of back wages and the Hon'ble Apex Court did not find the case as a fit case where

Fundamental Rule 54 could have been invokved by the authorities.

Fundamental Rule 54 came to be considered by a Constitution Bench of the Hon'ble Supreme Court in Managing Director, ECIL Vs. B. Karunakar, (1993) 4 SCC 727. Fundamental Rule 54 reads as under:-

> "54 (1). When a government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order-
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> (a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
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> (b) whether or not the said period shall be treated as a period spent on duty."

While considering Fundamental Rule 54, a Constitution Bench of the Hon'ble Supreme Court in Managing Director, ECIL Vs. B. Karunakar (supra), held that the question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final

outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

In Life Insurance Corporation of India & Anr. Vs. Rampal Singh (supra), a Division Bench of this Court, while considering the question of pay and allowances for the period for which the respondent therein had not worked, held as under:-

> "As regards last contention advanced by the counsel for the appellant Corporation that plaintiff remained out of service and has not worked during intervening period as such he is not entitled to grant of consequential benefits, in our considered opinion, such a contention is of no substance. It is a case, where plaintiff has been restrained from working in service of Corporation for no fault on his part and once order of dismissal from service has been found to be in violation of principles of natural justice and of relevant Service Regulations, as a consequence whereof, reinstatement in service with consequential benefits is a natural corollary thereto and no departure can be made therefrom, and principle of no work-no pay does not apply in the facts of present case."

In Pramod Kumar Sharma Vs. Laxmi Narain Sharma (supra), this Court, while setting aside the termination order made no specific order regarding consequential benefits and it was held that when termination order was set aside then the employee was entitled to get all the consequential benefits as if no termination order was passed.

While deciding the case, the Hon'ble Supreme Court referred its decisions in Rajasthan State Road Transport Corporation & ors. Vs. Shyam Bihar Lal Gupta, (2005) 7 SCC 406, wherein it was observed as under:-

> According to the learned counsel for the appellant Corporation, the decree is absolutely silent so far as the back-wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary the plaintiff was entitled to the back wages."

In the instant case, the petitioner succeeded in the review petition and his reinstatement in service was ordered, though without any specific order regarding the back wages. Keeping in view the decisions of the Hon'ble Supreme Court in Pramod Kumar Sharma Vs. Laxmi Narain Sharma (supra) and a decision of this Court in Life InsuranceCorporation of India & Anr. Vs. Rampal Singh (supra), the writ petition deserves to succeed.

In the result, the writ petition is allowed. The petitioner is entitled to get all consequential benefits including payment of salary and allowance as if no order of removal from service was passed. The respondents are directed to make payment of the salary and allowance to the petitioner for the period from the date of his removal from service. There shall be no order as to costs.

(H.R. PANWAR), J.

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